MAIMUNAH & ANOR. v. ABU BAKAR & ANOR.

[O.C.J. (Hepworth J.) June 21, 1963]

[Penang — Civil Suit No. 250 of 1962]

Damages — Fatal accident — Mode of computing damages.

The deceased a linesman and meter reader was killed in a motor car accident on the 24th November 1961. He was 31 years old and was survived by a widow of 28 years old and 8 young children. Prior to his death, the deceased received a basic salary of $103 a month plus $11 allowance and a bonus in the last working year of $144. In awarding $9,240 general damages the court estimated that the deceased retained $24 for himself and paid his wife $90 a month. From the figure $90 the court deducted $20, a sum assessed to have been expended on the deceased, leaving $70 for the wife and children. The court estimated the deceased's probable expectation of life to be 24 years and used a multiplier of 11, taking into account some danger in the occupation, the probability of the widow's remarriage which was not great, and other like matters of speculation and doubt.

CIVIL SUIT.

Triptipal Singh for the plaintiffs.

Ng Chee Kong for the defendants.

A. Jayadeva held a watching brief for the defendants.

Cur. Adv. Vult.

Hepworth J.: The plaintiffs are the administratrices of the estate of Che Yus bin Jamaludin, deceased, and reside at No. 444, Jalan Bukit Awi, Kulim, Kedah. They are suing as such administratrices on behalf of the estate of the said deceased and on behalf of his dependants and beneficiaries.

The 1st defendant is a replanting officer in Kulim and resides at No. 443, Jalan Bukit Awi, Kulim, Kedah, and the 2nd defendants are the administratrices of the estate of Haji Taib bin Haji Ahmad, deceased, and are sued as such. The said Haji Taib was at all material times the owner of motor-car No. K. 6685.

On the 24th November, 1961, at about 7.30 p.m. the 1st defendant was driving the said motor-car No. K. 6685 as the servant or agent of the said Haji Taib from Alor Star towards Kulim along the Alor Star/Butterworth main road. Amongst the passengers, in addition to the 1st defendant and the said Haji Taib, was the said Che Yus bin Jamaludin.

At about the 11½ milestone, Kepala Batas, Province Wellesley North, the said car driven by the 1st defendant collided with the rear of motor lorry No. P. 9272, which was parked at the side of the road. As a result the said Che Yus bin Jamalulin was killed instantly.

The plaintiffs claim that the death of the said Che Yus bin Jamaludin was caused by the negligent driving of the said car by the 1st defendant.

The defendants admit liability and accordingly all that remains to be done is to assess the quantum of damages.

Special damage was agreed at $595.

As regards general damage, evidence was given by the widow of the deceased that the deceased, his wife and 7 children, the eldest of whom was 12, all lived together. An eighth child was born subsequent to the death of the deceased.

The widow stated in evidence that her husband gave her $100 per month for household expenses in one lump sum, her husband's salary, she stated, being $120 per month. The deceased was employed at Messrs. Huttenbachs Ltd. at Kulim as a linesman and meter reader and evidence was given by Messrs. Huttenbachs' chief clerk that immediately prior to his death the deceased had been in receipt of basic pay of $103 per month plus $11 allowance. In addition for the last working year he had received a bonus of $144.

That was all the evidence that was led as to the income of the deceased and I think it unlikely that if his monthly income amounted to $114 that he would only retain $14 for himself. I think that a more likely figure would be $24 and that he would have paid his wife $90. From this figure of $90 has to be deducted the amount expended on the deceased and I think it would be fair to assess this at $20, leaving $70 for the wife and the children. In my view therefore the widow and children were dependants of the deceased to the extent of $70 per month, which gives a figure of $840 per annum.

This sum, however, has to be taxed down by having due regard to uncertainties. In this case, for instance, the deceased, who was aged 31 at the time of his death, was engaged in a job which included the putting up and taking down of high tension electric lines, an occupation to which, it was stated in evidence, there is attached some danger. In addition the widow was aged 28 and might re-marry, although with 8 young children this probability is not great. And there are other like matters of speculation and doubt. Taking the deceased's probable expectation of life to be a further 24 years I think the uncertainties will have been adequately provided for if a multiplier of 11 is taken, which will give a figure of $9,240.

As regards loss of expectation of life of the deceased, a relatively young man of 31, I think that in all the circumstances an award of $2,500 will be appropriate.

As death was instantaneous there was no claim for pain and suffering.

The damages awarded under section 8 of the Civil Law Ordinance, 1953, however merge

with the damages awarded under section 7 of the Ordinance.

Accordingly there will be judgment for the plaintiffs for special damages of $595 and general damages of $9,240 and costs.

The general damages of $9,240 are to be divided as to $4,440 to the widow Maimunah binti Abdullah and as to the balance $600 to be paid to each of the 8 children. The shares of the children are to be paid into the post office savings bank in the name of the Senior Assistant Registrar, Supreme Court, Penang, as trustee.

Order accordingly.

Solicitors: *Triptipal Singh*; *Singh & Co.*; *Jayadeva & Zahir.*

CHEONG KEE TECK v. QUAH HOAY KWAN & ORS.

[O.C.J. (Suffian J.) September 23, 1963]

[Alor Star — Kedah Civil Suit No. 102 of 1962]

Land Law — Plaintiff acquiring estate under agreement of sale — Entering into possession — Fragmentation of estate — Contract for sale to 3rd party — Completion in 6 months — 3rd party contracting with 1st and 2nd defendants for sale to latter — 1st and 2nd defendants paying considerable sums to 3rd party — Entering into possession — 3rd party absconding — Rights of 1st and 2nd defendants as against the plaintiff.

Trespass — Kedah Land Enactment (No. 56), s. 78 — Whether registered proprietor a necessary party — Right of person in possession to sue for trespass under system of registration of title — Misrepresentation — Whether fraudulent — Whether acted upon.

Licence — Agreement entitling 3rd party to tap rubber on monthly payment of a sum — Whether terminable.

The plaintiff purchased the Tupah Estate in Kedah and entered into possession on August 30, 1961. The bulk of the estate was transferred to him as proprietor but there remained a small area in respect of which the transfer was not registered.

One P.C. contracted with the plaintiff to purchase the estate for $1,150,000 and paid a deposit of $25,000. Completion was to take place within six months. Under a second agreement P.C. was given the rights to tap rubber on the estate at a monthly payment of $9,000. The 1st and 2nd defendants contracted with P.C. to purchase portions of the estate and against the advice of their solicitor paid considerable sums under the contracts of sale to P.C. who undertook to effect transfers into their names on payment by them of the full purchase prices. P.C. also allowed them into occupation of the estate under his rights flowing from the second agreement to tap rubber. Subsequently, P.C. failed to make the monthly payment of $9,000 and the plaintiff terminated his right to tap. The 1st and 2nd defendants were, however, the persons actually carrying out the tapping and they continued to do so.

P.C. failed to complete the contract of sale with the plaintiff. In fact, he absconded to India. The plaintiff forfeited the deposit and rescinded the contract of sale with P.C. under the provisions thereof, and he then brought an action against the defendants for an injunction and damages for trespass. The 1st and 2nd defendants counterclaimed for damages for fraudulent misrepresentation. Their allegation was that the plaintiff had represented to them that he had sold the estate to P.C. and had authorised P.C. to sub-divide the estate and sell it and that they were to deal with P.C.; that they had acted on this misrepresentation which they claimed was fraudulent.

Held: (1) the representation of the plaintiff to the 1st and 2nd defendants was to the effect that he had sold the estate to P.C. and was therefore not false;

(2) even assuming it was a fraudulent misrepresentation there was ample evidence to indicate that the defendants did not enter into contracts with P.C. on the strength of it;

(3) the first and second defendants were in occupation under a derivative right flowing from the second agreement between the plaintiff and P.C. The right was a licence to tap and as such was properly terminated by the plaintiff;

(4) as from the date of termination of the licence, the 1st and 2nd defendants were trespassers. In respect of that portion of the estate which was registered in the plaintiff's name, they were trespassers in virtue of his rights of proprietorship as well as his rights of possession; in respect of that area which was still not registered in his name, they were trespassers in virtue of his rights of possession;

(5) trespass is an injury to a possessory right; to maintain an action of trespass it is not necessary to be a registered proprietor; plaintiff could maintain an action of trespass if he is the person in possession at the time of the trespass.

Case referred to:—

(1) *Bradford Building Society* v. *Borders* [1941] 2 All E.R. 205.

The following cases were *inter alia* cited in argument: *Wuta-Ofei* v. *Danquah* [1961] 2 All E.R. 596, P.C. at p. 600. *Canvey Island Commissioners* v. *Preedy* [1922] 1 Ch. 179 at p. 199. *Lows* v. *Telford* (1876), 1 App. Cas. 414, H.L. at p. 426. *The Ocean Accident and Guarantee Corporation* v. *Ilford Gas Co.* [1905] 2 K.B. 493 at p. 497-9. *Nicholls* v. *Ely Beet Sugar Factory* [1931] 2 Ch. 84 at p. 86. *Bristow* v. *Cormican* (1878), 3 App. Cas. 641 at p. 656-7. *Wallingford* v. *Mutual Society* (1880), 5 App. Cas. 685 at p. 697. *Lawrence* v. *Lord Norreys* (1890), 15 App. Cas. 210 at p. 221. *Davy* v. *Garrett* (1877), 7 Ch. D. 473 at p. 489. *Bharat Dharma Syndicate Ltd.* v. *Harish Chandra* A.I.R. 1937 P.C. 146. *Staffordshire Financial Co.* v. *Hill* (1909), 53 S.J. 446, H.L. *Derry* v. *Peek* (1889), 14 App. Cas. 337 esp. at p. 374 *per* Lord Herschell. *Le Lievre* v. *Gould* [1893] 1 Q.B. 491 at p. 498 *per* Lord Esher. *Central Bank of India Ltd.* v. *Guardian Assurance Co. Ltd.* A.I.R. 1936 P.C. 179. *A. L. N. Narayanan Chettiar* v. *Official Assignee, High Court, Rangoon* A.I.R. 1941 P.C. *Hansraj Gupta* v. *Dehra Dun-Mussoori Electric Tramway Co. Ltd.* A.I.R. 1940 P.C. 98. *Malayan Tobacco Distributors Ltd.* v. *United Kingdom Tobacco Ltd.* [1937] M.L.J. 148, P.C. *The London Chartered Bank of Australia* v. *Lempriere* (1873), L.R. 4 P.C. 572 at p. 597. *Kettlewell* v. *Watson* (1882), 21 Ch. D. 685 at p. 705. *Gordon Hill Trust Ltd.* v. *Segall* [1941] 2 All E.R. 379, C.A. at p. 391. *Bainbridge* v. *Brown* (1881), 18 Ch. D. 188 esp. at p. 198. *Butwick* v. *Grant* [1924] 2 K.B. 483. *Lee Beng Choon* v. *Tan Ngiap Kee* [1962] M.L.J. 315 at p. 317. *Annie Yeo* v. *Senanayake* [1963] M.L.J. 43. *Nocton* v. *Lord Ashburton* [1914] A.C. 932 at p. 951, H.L.